THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A. No.336 of 2005

JUDGMENT:

1 This appeal is filed by the respondent in the O.P. aggrieved by the award dated 12.02.2004 passed in O.P.No.928 of 1998 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad wherein an amount of Rs.1.00 lakh was awarded to the claimant towards compensation in respect of an accident that took place on 02.05.1997.

2 The facts, in nutshell, that led to the filing of the present appeal are as follows:

The respondent herein who is the claimant in the O.P. was working as clerk in D.M's Office, APSRTC, Bhainsa. Though he was working at Bhainsa, his family was staying at Nizamabad. As his son suddenly fell sick due to severe stomach ache, the claimant went to Nizamabad and after getting his son treated, he boarded the bus bearing No.AP 10 Z 2584 and when the said bus reached Jankampet shivar near Dargah at about 8.15 AM, another RTC bus bearing No.AP 10 Z 287 came in opposite direction in a rash and negligent manner at high speed and dashed against the bus in which the claimant was travelling, as a result of which, the claimant and other passengers received injuries. The claimant received injuries on his throat, hands, forehead and other parts of the body. He was initially taken to Government Hospital at Nizamabad and as the ENT specialist was not available, he was shifted to Gopi Krishna ENT nursing home at Nizamabad where P.W.2 treated him and then he was referred to Dr. Satyanarayana, an orthopaedic surgeon for expert treatment. In connection with the said accident, a case in Cr.No.70 of 1997 was registered on

the file of Nizamabad Police Station against the driver of the RTC bus bearing No.AP 10 Z 287. Ex.A.1 is the copy of the first information report and Ex.A.2 is the copy of the charge sheet filed by the police in the said crime after completing investigation.

3 The appellant herein filed counter disputing the nature of injuries received by the claimant and also the nature of treatment given to him.

4 Basing on the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident was due to the rash and negligent driving of the R.T.C. bus bearing No.AP 10 Z 287 by its driver?
2. Whether the petitioner is entitled for compensation. If so, to what amount and against which of the respondents?
3. To what relief?

5 During the course of trial, the claimant examined himself as P.W.1 and also examined the doctor who treated him as P.W.2. He also got marked EXs.A1 to A.19. On behalf of the appellant, no evidence either oral or documentary was adduced.

6 P.W.1 the claimant speaks to the manner in which the accident took place. According to him on 01.05.1997 he came to Nizamabad as his son suddenly fell sick due to severe stomach ache and after getting his son treated, he was returning to Bhainsa to attend to his duties. He boarded an RTC bus bearing No.AP 10 Z 2584. When the said bus reached Jankampet Shivar near Dargah at about 8.15 AM, another RTC bus bearing No.AP 10 Z 287 came in opposite direction in a rash and negligent manner and at high speed and dashed against the bus in which he was travelling. Due to the said accident, the claimant received injuries. Though he was cross examined at length, nothing useful

was elicited by the appellant-Corporation. The Corporation has not taken any steps to get the driver of the offending vehicle examined to prove that there was no negligence on his part. As such the evidence of P.W.1 remains unrebutted. Therefore, the issue whether the accident took place due to the rash and negligent driving of the driver of the RTC bus bearing No. AP 10 Z 287 stands proved.

7 The claimant in his claim application filed before the Tribunal claimed damages under various counts. But ultimately he restricted his claim to an extent of Rs.2.00 lakhs in lumpsum.

8 According to P.W.2, the doctor who examined the claimant, on 02.05.1997 the injured was brought before him for treatment and that he treated the injured from 02.05.1997 to 06.05.1997. According to him, P.W.1 sustained grievous injury to his throat. He advised P.W.1. to take further treatment at Hyderabad. He again examined P.W.1 on 10.08.2003 and issued disability certificate after verifying the records. According to him, he found that P.W.1 was suffering from “Fracture of Thyroid, Cartilages with right cricoids and joint disruption, bulky right vocal cord with medial pull of vocal cord and pharyngo epiglotic folds and Ary-Epiglottic folds with no significant movement of right vocal cord on phonation and minimal compromisation of glottic space and he assessed the disability at 50%. According to him, P.W.1 requires further treatment and operation for his injuries. Ex.A.19 is the disability certificate issued by P.W.2.

9 The evidence on record establishes that PW.1 also took treatment from one Dr.Tajudiddin, who referred him to CDR hospitals at Hyderabad. P.W.1 took treatment at CDR hospitals as an inpatient till 06.06.1997 and spent considerable amount of

money for his treatment. It has come on record that due to the injuries sustained by him, P.W.1 cannot talk freely, cannot raise voice, cannot speak loudly, facing difficulty in drinking water and also while taking meals.

10 The evidence of P.W.2 establishes that P.W.1 is still having vocal card palsy (not functioning). Exs.A.4 to A.18 establish that the treatment taken by P.W.1 in various hospitals. The Tribunal observed the condition of the injured (P.W.1) when he attended the Court to give evidence. The Tribunal observed the demeanour of the injured found that he was unable to speak loudly and was giving evidence slowly due to fracture to throat. After recording the evidence of P.W.1, the Tribunal again recalled him after some time to examine his condition with regard to his ability to talk. The Tribunal found that there was no change in the condition of the injured. Ex.A.9 CT Scan report of throat shows the following:

> "Act Image Morphology is in favour of:
> Surgical emphysema in subcutaneous and deep planes nick anterior and superior mediastinum with suggestion of fracture of thyroid cartilage and fracture of cricoid and arytenoted cartilages with right cricothyroid joint disruption. Bulky right vocal cord with medial pull of vocal cord and pharyngo epiglottic and ary epiglottic folds with no significant movement of right vocal cord on phonation and minimal compromisation of glottic space."

11 Taking into consideration the nature of injuries received by P.W.1 and the disability he which he sustained, the Tribunal awarded a sum of Rs.1.00 lakh in lumpsum to the claimant towards compensation. The said amount awarded by the Tribunal appears to be just and reasonable and needs no interference

12 For the above reasons, there are no grounds to interfere with the award passed by the Tribunal and this appeal preferred by the Corporation is liable to be dismissed.

13 In the result, the appeal is dismissed. No order as to costs.

C. PRAVEEN KUMAR, J

Date: 08-08-2012

Kvsn